(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATIONS, INC. FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR REGULATED TITLE 61 SERVICES.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  U S WEST COMMUNICATIONS, INC.,  Appellant,  v.  IDAHO PUBLIC UTILITIES COMMISSION,  Respondent. | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | SUPREME COURT  DOCKET NO.  24349  CASE NO. USW-S-96-5  NOTICE OF REHEARING  ORDER NO. 27659 |

On December 16, 1997, U S WEST Communications filed a Notice of Appeal regarding its last rate case, Case No. USW-S-96-5.  Attached to the Company’s Notice of Appeal was a Motion to limit the Clerk’s standard record on appeal.  I.A.R. 28(a)(3).  As part of its Motion, the Company requested that the Commission augment the Record on Appeal with nearly 200 pages of  documents not previously placed into evidence in the underlying proceeding.  After the Commission Secretary served the proposed appellate record on February 25, 1998, the Commission Staff filed a timely answer and objection to U S WEST’s request to include many of the documents in the record on appeal.  In addition, the Staff requested that the Commission make two corrections to the proposed record, add one document to the record, and delete a portion of the record.

In conformance with Appellate Rule 29, the Commission scheduled a hearing on the Staff’s objections and requests for April 1, 1998.  Both U S WEST and the Staff presented arguments at the hearing.  After reviewing the hearing record in the proceeding below, the written pleadings and the parties’ oral arguments, the Commission (on its own motion and pursuant to Idaho Code § 61-624) amends its prior Order No. 27152 and partially grants the Company’s Petition for Reconsideration.  More specifically, the Commission shall reconsider its decision to re-regulate “toll restriction” pursuant to Idaho Code § 62-605(5).  In this Order the Commission also settles portions of the record on appeal.

BACKGROUND

A.   Appeal Proceedings

On December 16, 1997, U S WEST filed a Notice of Appeal in the Company’s last rate case, No. USW-S-96-5.  Attached to the Notice of Appeal was a Motion to limit the Clerk’s standard record on appeal.  I.A.R. 28(a)(3).  As part of its Motion, the Company attached “Addendum A” requesting that the Commission augment the record on appeal with many documents not previously placed into evidence in the underlying proceeding.  I.A.R. 17(i) and 28(b).

On December 30, 1997, the Commission Staff filed two pleadings.  First, the Staff also requested that additional transcript excerpts and documents be included in the record on appeal.   I.A.R. 19.  Second, the Staff filed an unopposed Motion for Extension of Time to answer U S WEST’s Motion.  Although the Staff generally agreed with the Company’s intention to limit the agency record on appeal, it objected to including many of the items set out in Addendum A in the appellate record.  In particular, the Staff asserted that several of the documents listed in Addendum A were not sufficiently identified to allow the Commission Secretary to identify the requested documents.(footnote: 1)  Consequently, the Staff requested and U S WEST did not oppose that Staff be allowed to file an answer to the Company’s Motion once the requested documents have been specifically identified.  On January 13, 1998, the Commission issued Order No. 27316 granting the Staff’s Motion.

On January 21, 1998, U S WEST filed an Amended Notice of Appeal.  The Company noted that the purpose of the Amended Notice was to “designat[e], with specificity, certain supplemental documents previously requested to be included in the Clerk’s Record on Appeal.”  Amended Notice of Appeal at 2.  Although the Amended Notice more clearly identified several documents that the Company desired to be included in the appellate record, Staff maintained that “questions remained about other documents.”  Staff’s Answer and Objection at 3.  On February 19, 1998, U S WEST filed a Second Amended Notice of Appeal.  The Second Amended Notice contained a list and copies of the documents that U S WEST requested be included in the appellate record.

On February 25, 1998, the Commission Secretary served the proposed appellate record on the parties.  On March 18, 1998, the Staff filed a timely Answer and Objection to U S WEST’s request to include several documents in the Record on Appeal.  I.A.R. 29(a).  In addition, the Staff requested that the Commission make two corrections, add one document to the record, and delete a portion of one document.  Id.  U S WEST did not file any objections to the proposed record.

In conformance with Appellate Rule 29, the Commission scheduled a hearing on the Staff’s objections and requests for April 1, 1998.  Both U S WEST and the Staff presented arguments at the hearing.  At the start of the hearing, U S WEST also submitted a written Response to Staff’s Answer and Objection.

B.  The Rate Case Proceeding

A review of the underlying rate case proceedings is helpful in understanding the issues decided in this Order.  U S WEST and the Staff are in agreement that the sole issue on appeal is the Commission’s decision that “toll blocking” or toll restriction service should be removed from the Commission’s Title 62 jurisdiction subject and returned to the Commission’s rate setting jurisdiction under Title 61.(footnote: 2)  Toll blocking prohibits a customer from gaining access to a long-distance carrier or, in other words, from making long-distance calls. Tr. at 1213.

1.  The Proceeding Below.    In the case, Staff witness Hart argued that toll blocking ought to be considered a part of basic local service.  He maintained that toll restriction “is a variation of [900/976] blocking services provided as a Title 61 service at the time the Company elected to be partially deregulated.”  Tr. at 1186.For its part, the Company argued that toll restriction did not meet the definition of “basic local exchange service” (two-way interactive switched voice communications).  Company witness Souba testified that toll restriction (in its current form) was offered to customers in September 1992.  Tr. at 3247.

At the hearing, the Company did not cross examine the Staff on this issue and introduced no exhibits on this subject.  In the initial post-hearing briefs, the Staff reiterated its toll restriction position but the Company did not address toll restriction.  In its subsequent Reply Brief, U S WEST noted that toll restriction was a disputed issue but suggested that this issue “need not be resolved in this docket. …[It] can be addressed in a more leisurely fashion without large numbers of customers being affected.”  US WEST Reply Brief at 33 (Emphasis added).

In its final Order the Commission found that toll restriction should be regulated as a Title 61 service.  Order No. 27100 at 58.  The Commission saw “no difference between toll restriction and other toll-blocking services that are [currently] classified as Title 61 services.”  Id.  The Commission also dismissed the Company’s argument that the Commission “accepted” toll restriction as a Title 62 service when the Company filed Title 62 price listings(footnote: 3) that included toll restriction service.  The Commission noted that when the Company moved its non-basic services to Title 62, the Company’s Vice President conceded that the Commission retains the authority to decide whether services are Title 61 or Title 62.  Id. citing Order No. 22416 at 7-8.

2.  Reconsideration.  On September 2, 1997, U S WEST filed a timely Petition for Reconsideration.  Idaho Code § 61-626.  The Company stated that it sought reconsideration of certain issues “based upon this Petition and the exhibits filed herewith.  In the event that the Commission deems that additional written briefs or evidentiary hearing would be helpful in aiding its determination of these issues, U S WEST stands ready to respond to such Commission guidance.”  Petition for Reconsideration at 2. None of the exhibits filed with the Petition addressed toll restriction.

On reconsideration, the Company made two primary arguments regarding toll restriction.(footnote: 4)  First, the Company argued that toll restriction does not meet the statutory definition to be considered a Title 61 service.  Second, and more pertinent to our decision in this Order, the Company argued that the Commission lacked the authority to “claw-back” toll blocking under Idaho Code § 62-605(5).(footnote: 5)  This statute allows the Commission, after meeting certain conditions, to remove a telecommunications service from Title 62 regulation and return it to Title 61 regulation. One such condition is that the subject service was offered as a Title 61 service on or before July 1, 1988.  U S WEST insisted that toll restriction could not be removed from Title 62 and returned to Title 61 “because the Commission’s authority to take such action is explicitly limited to services which were subject to Title 61 regulation on July 1, 1988.”  Petition for Reconsideration at 38.  The Company argued that toll restriction “was not offered by U S WEST until September, 1992.” Id.

In its answer to U S WEST’s Petition for Consideration, the Staff argued that given the joint use of the telecommunications network, “access” to the toll network is part of basic local service.  “Without an access line, there can be no access to toll.”  Staff Answer at 11.  Turning to the  claw-back argument, Staff insisted that there is no difference between toll blocking and “the 900 and 976 blocking which is currently classified as a Title 61 service.  . . . See Order No. 22416.” Id. at 12; Exhibit 126.  Staff also declared (for the first time) that the Commission had previously approved toll restriction service as part of a service package implemented by U S WEST’s predecessor, Mountain Bell, on April 1, 1986.  See Order No. 20349 at 1.”  Id. at 12.

3.  The Commission’s Decision on Reconsideration.  In its final Order on reconsideration, the Commission reviewed the arguments made by the Company and the Staff.  Order No. 27152.  The Commission affirmed its decision that toll restriction is appropriately classified as a Title 61 service under both the definitional and  claw-back arguments.  In addressing the  claw-back issue under Idaho Code § 62-605(5), the Commission stated:

Regarding the Company’s argument that the Commission had not exercised its regulatory authority over toll restriction service prior to July 1, 1988, we direct its attention to Case No[s]. U-1000-[1]63[/-86] and Order Nos. 18188, 18304, 19364, 19663, 19701, 19716, 19822, 19931[,20349] and 20366.(footnote: 6)  Over a period of nearly three years, this Commission investigated the “feasible methods of providing service for calls within Idaho or within a portion of Idaho such as . . . local only.”  Order No. 19364 at 2 (emphasis added).  It is disingenuous to now claim that the Commission did not regulate that aspect of local service prior to the effective date of the Telecommunications Act of 1988.  Technological advancement has simply brought us to the point where what the Commission asked of the Company in 1983 can be accomplished.

Order No. 27152 at 32-33  (Footnote added).  U S WEST timely appealed.

ORAL ARGUMENT ON SETTLING THE RECORD

A.  Legal Standards

Both U S WEST and the Staff maintain that the Commission is vested with the authority to settle the record on appeal.  We agree.  As set out in Appellate Rule 29, any objection to the agency’s record “shall be heard and determined by the . . . administrative agency from which the appeal is taken.”  I.A.R. 29(a).  It is self-evident that the Commission is in the best position to recognize and discern the actual record in its underlying proceeding.  When objections to the agency’s record have been filed, the Commission is to utilize its discretion in settling the record on appeal.  See Aker v. Aker, 52 Idaho 50, 11 P.2d 372 (1932) (settling the record on appeal is a matter resting entirely in the judge’s discretion).  In exercising its discretion, the Commission must: (1) correctly perceived the issue as one of discretion; (2) act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason.  Sun Valley Shopping Ctr. v. Idaho Power Company, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

B.  Position of the Parties

U S WEST requested that the Commission include in the appellate record nearly 200 pages of documents not previously included in the record below.  More specifically, approximately 150 pages represent eight different tariff advices or price lists submitted to the Commission from December 1985 to September 1993.  These documents generally outline the history of “toll restriction.”  The other documents can be described as: (1) the Company’s Notice of Election in Case No. MTB-T-89-1 listing the products and services that the Company proposed to move to Title 62; (2) Order No. 22839 issued November 9, 1989, discussing the mixed packaging of Title 61 and Title 62 services; and (3) a 1992 Staff “decision memorandum” pertaining to toll restriction and the Commission’s minutes from its public meeting where that decision memorandum was acted upon.

1.  Staff.  The Commission Staff objected to the inclusion of many documents that U S WEST has requested be included in the appellate record.  The Staff generally asserted that the subject documents were not part of the record in the underlying proceeding and therefore, were not considered by the Commission below.  Introduction of these documents would constitute new or additional evidence prohibited by Idaho Code § 61-629 and I.A.R. 28(b).  Staff Answer and Objection at 6-11; Tr. at 18-19, 23-26.

In pertinent part, Staff asserted Appellate Rule 28(b) generally provides that a party may request additional documents to be included in the record on appeal.  The rule states that “any party may request any written document filed with the . . . agency to be included in the clerk’s or agency’s record including, but not limited to, . . . written jury instructions given by the court, depositions, statements or affidavits considered by the court or administrative agency in the trial of the action or proceeding, or considered on any motion made therein, and memorandum opinions or decisions of a court or administrative agency.”  I.A.R. 28(b).  The Staff argued that the requested documents had not been considered by the Commission in this proceeding.  Tr. at 23.

Finally, Staff maintained that the tariffs and price lists should not be entered into the appellate record “because they are irrelevant, voluminous, and immaterial.  I.R.E. 401 and 402.”  Staff Answer and Objection at 8.  The Staff observed that a review of these documents reveal that many pages of the tariffs and price lists do not contain any reference at all to “toll restriction.”

 2.  U S WEST.  U S WEST stated that it has requested these documents “be included in the record on appeal so that the Court may have the benefit of reviewing the complete regulatory treatment of Toll Restriction when it decides the issues on appeal.”  U S WEST Response at 6.  U S WEST believes “that all of the documents requested in its Second Amended Notice of Appeal, in part, form the Commission’s decision regarding [the] classification of toll restriction.  Moreover, the documents requested by U S WEST are public documents on file with the Commission and are particularly amenable to judicial notice.”  Id. at 7.  Finally, US WEST insisted that the Commission employed a “double standard” allowing itself and the Staff to rely upon the regulatory history of toll restriction, but denying the Company the same opportunity to introduce “Toll Restriction’s regulatory history” into the record on appeal.   Id. at 4.

C. Commission Findings

At this juncture of the proceeding, the Commission’s task is to settle the record on appeal.  As set out above, U S WEST requested approximately 200 pages of documents be included in the record.  The Company urged us to include these documents in the appellate record because, it argues,  the documents will supply the Court with the regulatory context and history surrounding the issue on appeal.  Our determination of the settlement disputes obligates us to review the evidence presented in the rate case proceedings below.

As we have previously observed, our prior Orders resolved more than 70 issues in this complex rate case involving our largest telecommunications carrier.  Order No. 27100 at 1.  Near the end of this long and arduous process, we are left with a single issue on appeal.  What in the beginning was an issue that received little attention in the rate case, has suddenly taken on greater importance.  In a perfect world, at this stage of the proceeding, one would normally find that the claw-back decision was supported by ample evidence, examined in detail, and exhaustively briefed by parties effectively advocating their positions.  However, we conclude that this did not occur in this case. Our observations of the underlying proceedings set out above support this conclusion.

Although both parties presented testimony regarding the claw-back issue, U S WEST did not sufficiently probe the Staff’s arguments and it chose not to cross-examine the Staff on this issue.  Moreover, the Company maintained in its post-hearing brief that the Commission need not even resolve the toll restriction issue in this docket.  On reconsideration, the Company’s claw-back argument of five sentences relyed upon its “institutional memory” that toll restriction was not offered until September 1992.  On the other side of the coin, Staff did not clearly articulate its claw-back argument and did not argue until its reconsideration answer that toll restriction (at least under its theory of the case) existed as part of a package of services approved by the Commission in 1986.   With the benefit of further review, we find that the underlying record is inadequate as it pertains to the claw-back issue.  This flaw carriers over to the appeal.

Before the Commission can “claw-back” a Title 62 service, that service must have been subject to our Title 61 jurisdiction on July 1, 1988.  Idaho Code § 62-605(5).  The documents U S WEST seeks to introduce into the record on appeal may be relevant to that issue.  To remedy this now apparent defect in the record, we believe it is appropriate (pursuant to our authority under Idaho Code § 61-624) to amend our reconsideration Order No. 27152 and grant U S WEST’s Petition for Reconsideration on this limited issue.  Section 61-624 allows the Commission “at any time” to “amend any order or decision made by [the Commission].”  Although we appreciate this is an unusual occurrence at this stage of the proceeding, we believe that such action is appropriate and reasonable.  Reconsideration was exactly what U S WEST was seeking in its Petition—that it have an opportunity to present evidence and for the Commission to reconsider the claw-back issue.  We further find that amending our prior Order to grant U S WEST reconsideration of this issue furthers the goal of not burdening the Court with issues which have not been reviewed sufficiently by the Commission.  In addition, we believe that the time restrictions imposed by our reconsideration statute will secure a just, speedy and inexpensive determination of this issue.  Accordingly, it is our intention to request that the Supreme Court suspend this appeal until such time as the Commission can complete its reconsideration of this limited issue.

Having determined that granting reconsideration of this issue is appropriate, we need not address U S WEST’s other arguments regarding the reasons why these documents should be included in the appellate record. The parties will be afforded an opportunity upon reconsideration to present evidence at our rehearing relevant to the issue of returning toll restriction services to Title 61 under the claw-back statute, Idaho Code § 62-605(5). We do not grant reconsideration on other toll restriction issues regarding the statutory definition of basic service, the reasonableness of the rates, or the sufficiency of toll restriction revenues.

Reconsideration provides an opportunity for a party to bring to the Commission’s attention any issue previously determined and thereby provides the Commission with an opportunity to rectify any mistake or omission.  Washington Water Power Co. v. Kootenai Environmental Alliance, 99 Idaho 875, 591 P.2d 122 (1979).   As set out above, the Commission grants reconsideration by rehearing and will allow parties to present additional evidence.   For purposes of calculating the reconsideration schedule, we find that the reconsideration hearing must be completed within 9 weeks (assuming that 4 weeks have already passed when the Commission issued Order No. 27152).  Having granted reconsideration of this issue by rehearing, we must also establish a rehearing schedule.  Idaho Code § 61-626 requires that we complete our reconsideration within 13 weeks after the date for filing petitions for reconsideration.  Idaho Code § 61-626(2).   If the Commission grants reconsideration, it “must issue its order upon reconsideration within twenty-eight (28) days after the matter is finally submitted for reconsideration.”  Id. Accordingly, we require the parties participating in this phase of the case to comply with the following schedule:

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| Staff and Intervenor Direct Prefile Testimony  USW Direct Prefile Testimony  Staff Rebuttal Testimony  1:30 P.M. Hearing  Initial Post Hearing Brief  Reply Post Hearing Brief  Issue Amended Order | August 12, 1998  August 26, 1998  September 2, 1998  September 8, 1998  September 25, 1998  October 2, 1998  October 30, 1998 |

The dates specified above are the dates that all documents must actually be received by all parties.  To improve the efficiency of this rehearing, the Commission will require those parties desiring to participate in the rehearing phase to notify the Commission Secretary of their intent to do so.  Parties shall notify the Commission Secretary if they desire to participate no later than August 6, 1998.  At that time, the Commission Secretary shall issue a revised service list to those parties desiring to participate in this phase of the case. A separate Notice of Rehearing will be issued once the parties have been identified.

D.  Other Issues Settling the Record

1.  Interrogatory No. 444.  In its Second Amended Notice, U S WEST requested that the Commission include in the appellate record the Company’s Interrogatory No. 444 and the Staff’s response to that interrogatory.  Second Amended Notice at 3.  The Staff objected to the introduction of this document into the appellate record because it was not introduced as an exhibit during the rate case hearing.  Staff Answer and Objection at 5-7 citing IDAPA 31.01.01.283 and I.A.R. 28(b) .  At oral argument, U S WEST withdrew its request to include the interrogatory.  Tr. at 12.

Commission Findings:  Given U S WEST’s offer to withdraw its request to include the interrogatory in the appellate record, there is no need for us to resolve upon this issue.  Accordingly, this document will not be included in the appellate record.

2.  Addition to the Record.  The Staff also requested that the Commission augment the appellate record with the third Settlement and Stipulation entered into between the Staff and U S WEST in the rate case.  The Stipulation was filed in the underlying case on October 17, 1997.  U S WEST did not object to the inclusion of this document in the appellate record.  Tr. at 36.

Commission Findings:  Given the fact that this document is contained in the agency record below and the lack of any objection, the Commission finds that it is reasonable and appropriate to include this document in the appellate record.

3.  Corrections to the Record.  The Staff next requested that the Commission make two corrections to the appellate record.  The Staff observed that the Commission had issued two “Erratum Notices to Order Nos. 27204 and 27152.”  Staff Answer and Objection at 12.  The first Erratum corrected a rate contained in an Appendix to Order No. 27204.  The correction changed the rate from $6.60 to $6.50.  The second Erratum amended Order No. 27152 and the Commission’s findings regarding the claw-back of toll restriction.

Commission Findings:  We shall partially grant the Staff’s request.  The Commission Secretary is directed to note on page 1 of the Appendix to Order No. 27204 and on page 33 to Order No. 27152 where appropriate that Erratums have been issued amending these texts.  The notation should indicated the location in the appellate record where the Erratum may be found.

4.  Deletion from the Record.  The Staff requested that the Commission make one deletion from the proposed appellate record.  In particular, the Staff requested that the Commission delete a reference in the Company’s Petition for Reconsideration that allegedly quantified the revenues associated with toll restriction for the 1995 test year.  Staff’s Answer and Objection at 12.  The Staff asserted that the representation made in the Petition’s Footnote 17 is not supported by the evidentiary record in the rate case proceeding.  Moreover, the Staff asserted that arguments made in briefs or petitions are not evidence.  Viveros v. State Dept. of Health & Welfare, 126 Idaho 714, 889 P.2d 1104 (1995).

The Company argued that the Staff’s failure to previously object to this reference should constitute a waiver of the Staff’s opportunity to object.  Counsel for U S WEST also agreed with the Staff that arguments contained in briefs or petitions are not evidence.  Tr. at 40.

Commission Findings:  We shall deny the Staff’s request for deletion.  We agree with both parties that briefs do not constitute evidence and arguments made in briefs or other pleadings are not evidence.  As the Company’s counsel stated, “the brief is not offered as evidence.”  Tr. at 40.  Accordingly, there is no need to delete the footnote.

O R D E R

IT IS HEREBY ORDERED that prior Order No. 27152 issued September 30, 1997, is amended to reflect that US WEST’s Petition for Reconsideration is partially granted as discussed in the text of this Order.  Reconsideration by rehearing is granted only for the purpose of receiving additional evidence concerning the Commission’s decision to “claw-back” toll restriction service pursuant to Idaho Code § 62-605(5).  Rehearing shall be conducted pursuant to the schedule set forth in this Order.

IT IS FURTHER ORDERED that parties desiring to participate in the rehearing phase of this proceeding advise the Commission Secretary of their intention no later than August 6, 1998.  The Commission Secretary shall then prepare a rehearing service list.  Service of documents in the rehearing phase shall be limited to those parties participating in the rehearing phase.

IT IS FURTHER ORDERED that U S WEST’s Motion to Limit the Clerk’s Record on Appeal is granted.  The Record on Appeal shall be limited to the issue of toll blocking.

IT IS FURTHER ORDERED that the Staff’s request to add the third Stipulation and Settlement Agreement is granted. This document shall be included in the appellate record.

IT IS FURTHER ORDERED that Staff’s requests to correct the record in two places is partially granted.  The Commission Secretary is directed to make a notation on the appropriate pages of Order Nos. 27152 and 27204 showing that the Commission had issued subsequent Erratums amending the text where indicated.  The notation shall also cite to the two Erratums contained in the appellate record.

IT IS FURTHER ORDERED that the Staff’s request to delete a reference contained in U S WEST’s Petition for Reconsideration in the underlying case is denied.

THIS ORDER AMENDS PRIOR Order No. 27152 by partially granting U S WEST’s Petition for Reconsideration in Case No. USW-S-96-5.  This Order also partially settles the record on appeal with the exeption of the claw-back of toll restriction pursuant to Idaho Code § 62-605(5).  The Commission anticipates that it will complete its rehearing and issue its Amended Order on reconsideration no later than October 30, 1998.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of July 1998.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:USW-S-96-5.dh3

**FOOTNOTES**

1:

For example, the Staff noted the first item listed in the Addendum requested that the Commission Secretary include in the appellate record all “data requests and responses. . . in connection with the products sold by U S WEST Communications, Inc. (U S WEST) known as “Toll Restriction.”  Staff Motion at 2 citing U S WEST Notice of Appeal, Addendum A-1.

2:

The Commission’s traditional rate setting authority is found in Title 61 of the Idaho Code.  The Idaho Telecommunications Act of 1988 added a new chapter to Title 62 and created a modified form of regulation. Idaho Code  § 62-604(2) allows telephone companies to remove telecommunications services other than “basic local exchange service” from the Commission’s Title 61 rate or price setting authority. In March 1989, U S WEST elected to remove its non-basic local services from Title 61.  Consequently, US WEST alone sets the prices for its non-basic services provided in southern Idaho (e.g., local services to businesses with more than five access lines, long-distance services, and custom calling features) but such services are still subject to the Commission’s Title 62 jurisdiction.

3:

Generally, the term “price lists”  refers to services regulated pursuant to Title 62, while the term “tariffs” refers to telecommunications services regulated under Title 61. In other words, Title 61 price-regulated services are listed in tariffs and Title 62 non-price regulated services are listed in price lists.

4:

The Company also took issue with the rates the Commission originally established for toll restriction.  On reconsideration, the Commission increased the rates for toll restriction services.  Petition for Reconsideration at 38-39; Order No. 27152 at 32-33.

5:

Idaho Code § 62-605(5) states: “For any telecommunication service that was subject, on the effective date of this act, to title 61, Idaho Code, and that at the election of the telephone corporation became subject to this chapter, the commission shall have continuing authority to review the quality of such service, its general availability, and terms and conditions under that it is offered. Upon complaint to the commission and after notice to the telephone corporation providing such service and hearing, the commission finds that the quality, general availability or terms and conditions for such service are adverse to the public interest, the commission shall have authority to negotiate or require changes in how such telecommunication services are provided. In addition, if the commission finds that such corrective action is inadequate, it shall have the authority to require that such telecommunication services be subject to the requirements of title 61, Idaho Code, rather than the provisions of this chapter.”

6:

The bracketed material in this sentence was corrected in an Erratum published by the Commission on December 3, 1997.  See p. 11 below.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

July 27, 1998